PATENT
88622

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	Robert Beckstrom, et al.	Confirmation No.	5983
Serial No.:	10/675,371	Art Unit: 2161	
Filed:	9/30/2003	Examiner: Daye, Chelcie L.	
For:	DATA SESSION NOTIFICATION MEANS AND METHOD		
Docket No.:	6065-88622		

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir/Madam:

This is an Appeal from the Final Office Action mailed October 23, 2009, finally

rejecting all of the pending claims. A Notice of Appeal was filed on February 23, 2010.

Applicable fees accompany this brief.

Should there be any deficiency in fees in connection with this Appeal, the

Commissioner is respectfully requested to and is hereby authorized to charge any such

deficiency in fees to Deposit Account No. 23-0920.

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1. REAL PARTY IN INTEREST

The real parties in interest are Aspect Software, Inc. having places of business at 829 Parkview Boulevard, Lombard, Illinois 60148.

2. RELATED APPEALS AND INTERFERENCES

There are no pending appeals, interferences, or judicial proceedings related to, directly affecting or affected by, or having a bearing on the Board's decision in the captioned Appeal.

3. STATUS OF CLAIMS

Claims 1-20 are currently pending, and have been finally rejected under 35 U.S.C. §103(a) in a Final Office Action dated October 23, 2009. A Notice of Appeal was filed on February 23, 2010. All currently pending rejected claims 1-20 are being appealed.

4. STATUS OF AMENDMENTS

There were no amendments filed subsequent to the final rejection.

5. SUMMARY OF CLAIMED SUBJECT MATTER

a. Independent Claim 1

Claim 1 recites a method for improving transactions in a communication system, (see, e.g. p. 13, paragraph 0030). The method comprises automatically monitoring an ongoing text data session between first and second parties in an

established transaction in the communication system (see, e.g. p. 13, paragraph 0030, lines 4-8; Fig. 3, ref. 302) and automatically conferencing a third party into the transaction as an additional participant in the transaction in response to the automatic monitoring of the data session between the first and second parties (see, e.g. p. 13, paragraph 0030, lines 9-16; Fig. 3, ref. 303-304).

b. Independent Claim 11

Claim 11 recites an apparatus for improving transactions in a communication system (p. 12, paragraph 0028; Fig. 2). The apparatus comprises means for automatically monitoring (corresponding structure: Monitor 208 of Fig. 2) an ongoing data session including at least one of data messages and text messages (p. 12, paragraph 0028, lines 12-14) between first and second parties in an on-going transaction in the communication system (p.12, paragraph 0029, lines 1-2); and means for automatically engaging(corresponding structure: engagement module 210 of Fig. 2) a third party into the on-going transaction as an additional participant in the transaction in response to the automatic monitoring of the data session between the first and second parties (see, e.g. p. 12 paragraph 0028, lines 7-9).

c. Independent Claim 20

Claim 20 recites a system for improving transactions in a communication system (p.12, paragraph 0028; Fig. 2). The system comprises a computerized transaction handling system which handles text data sessions established between first and second parties in an ongoing transaction in the communication system (see, e.g. p. 12, paragraph 0028, Fig. 2), and a computerized sub-system associated with the transaction handling system which automatically monitors at least some of the data

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sessions (see, e.g. p. 12, paragraph 0028, lines 12-14; Fig. 2, ref. 208). The system also includes a computerized sub-system associated with the transaction handling system which automatically joins a third party into the ongoing transaction as an additional participant in the transaction in response to detection in real-time of at least one target parameter by the automatic monitoring (see, e.g. p. 12, paragraph 0028, lines 7-17; Fig. 2, ref. 210).

d. Dependent Claim 3

Claim 3 recites the method according to claim 1, wherein the third party is automatically engaged in response to the automatic monitoring to review at least one of text messages and emails before they are sent (see, e.g. paragraph 0030, lines 8-10).

e. Dependent Claim 8

Claim 8 recites the method according to claim 1, wherein the monitoring of the data session between the first and second parties is conducted in real-time (see, e.g. paragraph 0030, lines 5-6) and wherein measured changes in stress levels of one of the parties based upon a deviation from a preceding time period cause engagement of the third party (see, e.g. paragraph 0030, lines 10-13).

f. Dependent Claim 12

Claim 12 recites the apparatus according to claim 11, wherein the data session is internet based and monitoring includes monitoring video input of the parties to the transaction to assist in determining stress levels of the parties (see, e.g. paragraph 0034, lines 8-10; Fig. 2, ref. 208).

g. Dependent Claim 13

Claim 13 recites the apparatus according to claim 11, wherein one of the parties in the transaction is a customer, wherein the monitoring comprises automatically detecting a keyword use by the customer indicating that the customer desires to deal with a supervisor (see, e.g. paragraph 0031, lines 15-16) and wherein the means for automatically engaging (corresponding structure: engagement module 210, Fig. 2) engages the supervisor in response thereto (see, e.g. paragraph 0028, lines 7-9; paragraph 0030,lines 9-10).

6.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appeal is taken from the rejections of Claims 1-2, 4-9, and 11-12, and 14-20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6, 047,060 to Fedorov et al. ("Fedorov") in view of U.S. Pat. No. 6,724,887 to Eilbacher et al. ("Eilbacher") and further in view of U.S. Pat. No. 6,363,145 to Shaffer et al. ("Shaffer"); and from the rejection of Claim 3 under 35 U.S.C. §103(b) as being unpatentable over Fedorov and Eilbacher, in view of Shaffer further in view of U.S. Pat. No. 6,138,139 to Beck et al. ("Beck"); and from the rejection of claim 10 under 35 U.S.C. §103(a) over Fedorov, Eilbacher, and Shaffer further in view of U.S. Pat. No. 6,021,428 to Miloslavsky ("Miloslavsky"); and from the rejection of claim 13 under 35 U.S.C. §103(a) over Fedorov, Eilbacher, and Shaffer further in view of U.S. Pat. No. 6,542,602 to Elazar ("Elazar").

7. ARGUMENT -- ALL PENDING CLAIMS ARE DISTINGUISHABLE OVER ANY COMBINATION OF THE CITED REFERENCES

a.   <u>Claims 1-20 are distinguishable over the cited references because none of the references disclose automatically conferencing, joining or engaging a third party into the ongoing transaction in response to the automatic monitoring</u>

Independent Claim 1 recites "...automatically conferencing a third party into the transaction as an additional participant in the transaction in response to the automatic monitoring of the data session...". Independent claim 11 recites "...automatically engaging a third party into the on-going transaction as an additional participant in the transaction in response to the automatic monitoring...". Independent Claim 20 recites "...a computerized sub-system... which automatically joins a third party into the ongoing transaction as an additional participant in the transaction in response to detection...by the automatic monitoring." Claims 2-10 and 12-19, are dependent upon Claims 1, and 11.

Thus, all claims require either automatically conferencing, engaging, or joining a third party (e.g. a supervisor) into an ongoing transaction in response to automatic monitoring of the ongoing transaction. The Final Office Action (10/23/10 Final Office Action, p.3, lines 5-8) cites Fedorov as disclosing conferencing a third party into the transaction as an additional participant in response to the monitoring at Col. 2, lines 34-39, and Col. 8, lines 27-35. However, Col. 2, lines 34-39 of Fedorov merely describes monitoring as a supervisor manually patching into a phone call and listening, requiring the monitoring party to "conference in". Thus, this only describes a supervisor manually conferencing himself in and listening, and thus does not disclose automatically conferencing or doing so in response to automatic monitoring. Further, the monitoring in Fedorov requires the third party supervisor to do the monitoring which is entirely different from the claimed automatic monitoring which

leaves the supervisor free to do other tasks until conferenced, joined or engaged in response to the automatic monitoring. Similarly, Col. 8, lines 27-35 of Fedorov merely describes a supervisor passively monitoring calls (passive monitoring is defining in Fedorov to mean a process of recording a transaction and then later playing it back, Fedorov, Col. 2, lines 42-44). Thus, this passage also fails to describe automatically conferencing, engaging, or joining, and fails to describe automatic conferencing in response to automatic monitoring. In fact, there is no automatic monitoring disclosed in Fedorov; and since the supervisor is doing the monitoring and is thus has already conference himself in, conferencing, engaging, or joining cannot then be performed in response to the monitoring.

The Office Action goes on (10/23/09 Final Office Action, p.3, line 17, to p. 4, line 3) to assert that since Fedorov is an ACD environment, automating would not be unheard of. However, Fedorov does not teach automatic monitoring or automatic conferencing, and also does not teach or suggest automatic conferencing in response to the automatic monitoring. Further, as discussed above, since the monitoring in Fedorov is performed by the supervisor, the supervisor is already conferenced in, and thus cannot be joined in response to the monitoring.

The Office Action further (10/23/10 Final Office Action, p. 4, line 4) asserts that Shaffer discloses or suggests the step of automatic at Col. 4, lines 17-27 Col. 5, lines 36-65, and Col. 2 lines 18-23. However, Shaffer monitors only voice not the claimed text/data messages and then merely notifies the supervisor but does not automatically engage the supervisor into the transaction. Instead Shaffer, merely sends a notification to the supervisor who then must manually select from a number

of options (Shaffer must, Col. 6, lines 33-52). The passage at Col. 2, lines 18-33 of Shaffer merely describes enabling a supervisor to utilize information generated by monitoring during a call; there is no mention of automatically conferencing, or doing so in response to automatic monitoring. The passage at Col. 4, lines 17-27 of Shaffer describes automatically monitoring but says nothing about automatically engaging or conferencing the supervisor into the transaction. Rather, during automatic monitoring, if a voice pattern is detected, the supervisor is notified (e.g., by a message displayed on supervisor terminal with various options to manually select, including manually choosing to monitor the call (Col. 6, lines 37-43; also see Col. 5, lines 33-35 and Col. 7, lines 48-57).

The Final Office Action also cites Shaffer at Col. 5, lines 36-65 as disclosing automatically engaging the supervisor within the monitoring session (10/23/10 Final Office Action, p.4, line 6). However, the claim calls for automatically conferencing, joining or engaging the third party into the transaction as a participant. The cited passage of Shaffer discloses automatic monitoring and the performance of some or all of that monitoring processing by the supervisor terminal ("If demand on the first agent's terminal's processor resources increase…the monitoring session data can be transmitted to the supervisor terminal 14 or the gateway 16 where the monitoring session can be continued." lines 58-65). This merely describes the automatic monitoring and using the supervisor terminal computer or the gateway computer to do some or all of the processing to automatically monitor the voice session, but does not describe automatically engaging the supervisor into the transaction as a participant in the transaction. The supervisor himself is not engaged in the transaction as a

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participant in this passage of Shaffer, only the processing power of the supervisor

terminal is being used, not to engage the supervisor, but to perform the processing

step of automated voice monitoring. Thus, a transfer of the automatic monitoring

function from one terminal to another is described, not the joining or engagement of

an additional participant into the transaction. Therefore, Shaffer does not disclose

automatically engaging or conferencing or doing so in response to the automatic

monitoring, nor does it disclose automatic text or data message session monitoring

(only voice monitoring).

The Final Office Action asserts that Shaffer teaches automation because it

teaches automatic voice monitoring and thus it would be obvious to automatically

engage. However, if Shaffer teaches automation then it teaches away from the

claimed automatic engagement because rather than using automatic engagement, it

teaches to rely on manual engagement. Thus, Shaffer teaches that one should not use

automation for this process, and it would be improper to assume this feature. Such an

assumption is merely hindsight reconstruction based on the teachings of the

applicant's application. Additionally, because there is no teaching in Shaffer of

automatic engagement there is no teaching of the engagement being in response to the

monitoring as claimed. Thus, no reference has been cited which teaches automatic

conferencing, joining, or engagement, or doing so in response to the automatic

monitoring. Since, independent claims 1, 11, and 20 all recite these features, they are

distinguishable over the cited references, as are dependent claims 2-10 and 12-19.

Thus, the claims 1-20 are distinguishable over any combination of the cited

references because none of the references disclose the feature of automatically conferencing, joining or engaging in response to the automatic monitoring.

b.   <u>Claim 10 is further distinguishable over the cited references because none of the references discloses automatic inspection of content of the data/text messages.</u>

Claim 10 has been rejected as being obvious over Fedorov, Eilbacher and Shaffer, and further in view of Miloslavsky. The Final Office Action cites Miloslavsky as disclosing automatic inspection of content of data messages, text messages and emails (10/23/09 Final Office Action, p.12, lines 8-14). However, Miloslavsky merely discloses routing of e-mails to agents. Thus Miloslavsky concerns the act of routing which occurs prior to the data session between the two parties. Miloslavsky thus merely establishes that incoming e-mails and routing of these to an agent in a call center was disclosed but does not teach or suggest that e-mails can be substituted for voice communications in an audio listening system such as Fedorov. The Final Office Action cited Col. 36, lines 9-36 as disclosing automatic inspection of content of data messages. However, this passage merely describes that e-mails may be diverse and describes automatic routing of the e-mails (again, this is prior to the session or transaction between the two parties becoming established), but there is no disclosure of monitoring established or on-going e-mail or data sessions between two parties (i.e., a session established between agent and customer can only occur after the agent has been selected by the router). There is no mention of the claimed automatic inspection of the contents of the e-mail to detect problem phrases in Miloslavsky, only a description of routing the e-mails.

Further, the combination of Fedorov, Eilbacher and Shaffer with Miloslavsky would simply provide a call center which can receive both voice and e-mail wherein the supervisor could decide to manually barge in to listen to the voice. Listening to the data messages such as e-mails would merely result in noise with no meaning to the supervisor, and routing decisions have nothing to do with monitoring of on-going agent-customer sessions. Thus, the combination of Fedorov, Eilbacher, and Shaffer with Miloslavsky is improper, and even if combined does not teach or suggest automatic monitoring of e-mails during established transactions, or automatic engaging of supervisor into the transaction based upon the monitoring and detecting problematic phrases.

c.   Claim 13 is further distinguishable over the cited references because none of the references discloses detecting a keyword use by the customer indicating the customer desires to deal with a supervisor.

Claim 13 stands rejected over Fedorov, Eilbacher, and Shaffer further in view of Elazar. The Final Office Action concedes that a combination of Fedorov, Eilbacher and Shaffer do not provide a detailed disclosure of detecting a keyword used by the customer indicating a desire to deal with a supervisor (10/23/09 Final Office Action, p. 13, lines 15-17) but assert that Eilbacher does disclose detecting keywords used by the customer at Col. 11, lines 26-50. However, the cited passage merely describes use of keyword recognition to determine a potential unsatisfactory customer experience but there is no mention of determining a desire by the customer to deal with a supervisor or of engaging a supervisor in response. The Final Office Action also cited Elazar at Col. 10, line 66 to Col. 11, line 6, as disclosing detecting a

desire to deal with a supervisor. However, this passage does not teach or suggest

doing such detection to then engage the supervisor in response. Rather, Elazar

teaches away from the claimed invention by teaching recording of the voice

conversation (not text) for later analysis instead of engaging the supervisor. Thus,

claim 13 is further distinguishable over the combination of the cited references.

> d. <u>Claim 3 is further distinguishable over the cited references because none of the references discloses the third party automatically engaged in response to automatic monitoring to review text messages before they are sent.</u>

Claim 3 stands rejected over Fedorov, Eilbacher and Shaffer in view of Beck.

The Final Office Action concedes that Fedorov, Eilbacher and Shaffer do not provide

detailed disclosure of the third party automatically engaged in response to automatic

monitoring to review test messages before they are sent but asserts that Beck does at

Col. 41, lines 35-39 (10/23/09 Final Office Action, p. 11, lines 8-13). However, Beck

at Col. 41, lines 35-39 merely describes icons accompanying hidden dialog for calling

up primary recorded dialogue to permit system auditors to review a transaction to

ensure nothing was missed. This describes an auditor review (i.e. subsequent review)

but does not describe automatic monitoring, automatic engagement of the third party,

in response the automatic monitoring, or review of text messages before they are sent.

Thus, Claim 3 is further distinguishable over the cited references.

> e. <u>Claim 8 is further distinguishable over the cited references because none of the references discloses the claimed measured change based upon a deviation from a preceding time period.</u>

Claim 8 stands rejected over Fedorov, Eilbacher and further in view of Shaffer. The Final Office Action relies on Shaffer at Col. 4, lines 44-63 and Col. 7, line 66 to Col. 8, lines 5 as disclosing measured changes is stress levels based on a deviation from a previous time period. However, both cited passages of Shaffer describe comparison to a predetermined value or threshold not changes based upon deviation from a preceding time period as claimed. Thus, Shaffer does not disclose the claimed feature of measured change based upon a deviation from a preceding period. Therefore, claim 8 is further distinguishable over the cited references.

      f.   <u>Claim 12 is further distinguishable over the cited references because none of the references discloses the claimed use of video monitoring to assist in determining stress levels.</u>

Claim 12 stands rejected over Fedorov, Eilbacher and Shaffer. The Final Office Action asserts that Eilbacher discloses monitoring including monitoring video of the parties to assist in determining stress levels of the parties at Col. 11, lines 11-44 (10/23/09 Final Office Action, p. 8, lines 3-4). However, the cited passage merely describes a stress analyzer which analyzes key strokes, length of call, time on hold, as well as speech detection but there is no mention of using video to assist in analysis. Thus, claim 12 is further distinguishable over the cited references.

8.   <u>CLAIMS APPENDIX</u>

An appendix containing a copy of the claims involved in the appeal is attached.

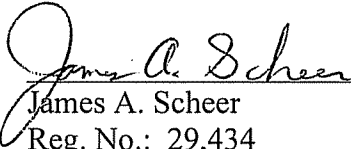9.   <u>EVIDENCE APPENDIX</u>

NONE. There is no evidence submitted by applicants and relied on in this appeal.

10.   <u>RELATED PROCEEDINGS APPENDIX</u>

NONE. There are no related proceedings.

Favorable consideration of this Appeal and allowance of the captioned

application are respectfully requested.

Respectfully submitted

James A. Scheer

James A. Scheer
Reg. No.: 29,434

Dated: June 23, 2010

HUSCH BLACKWELL SANDERS LLP
  WELSH & KATZ, LTD
120 South Riverside Plaza, 22nd Floor
Chicago, Illinois 60606
(312) 655-1500 Telephone

CLAIMS APPENDIX

1. A method for improving transactions in a communication system, comprising: automatically monitoring an ongoing text data session between first and second parties in an established transaction in the communication system; and automatically conferencing a third party into the transaction as an additional participant in the transaction in response to the automatic monitoring of the data session between the first and second parties.

2. The method according to claim 1, wherein the third party is at least one of a virtual party and an automated input.

3. The method according to claim 1, wherein the third party is automatically engaged in response to the automatic monitoring to review at least one of text messages and emails before they are sent.

4. The method according to claim 1, wherein the third party is automatically engaged into a background of the ongoing data session of at least one of the first and second parties in response to the automatic monitoring.

5. The method according to claim 1, wherein the third party is automatically engaged into a foreground of the ongoing data session to reduce the stress levels of at least one of the first and second parties in response to the automatic monitoring.

6. The method according to claim 1, wherein the third party communicates only with one of the first and second parties.

7. The method according to claim 1, wherein the third party communicates with both of the first and second parties.

8. The method according to claim 1, wherein the monitoring of the data session between the first and second parties is conducted in real-time and wherein measured changes in stress levels of one of the parties based upon a deviation from a preceding time period cause engagement of the third party.

9. The method according to claim 1, wherein the monitoring of the data session is conducted by at least one of; analyzing a respective voice signal of at least one of the first and second parties, converting a respective voice signal of at least one of the first and second parties to text and analyzing the text, and analyzing a physical stress level of at least one of the first and second parties.

10. The method according to claim 1 wherein the automatic monitoring comprises automatic inspection of content of data messages, text messages, and emails to detect problematic phrases, and wherein detection of problematic phrases within the content engages the third party.

11. An apparatus for improving transactions in a communication system, comprising:

means for automatically monitoring an ongoing data session including at least one of data messages and text messages between first and second parties in an on-going transaction in the communication system; and

means for automatically engaging a third party into the on-going transaction as an additional participant in the transaction in response to the automatic monitoring of the data session between the first and second parties.

12. The apparatus according to claim 11, wherein the data session is internet based and monitoring includes monitoring video input of the parties to the transaction to assist in determining stress levels of the parties.

13. The apparatus according to claim 11, wherein one of the parties in the transaction is a customer, wherein the monitoring comprises automatically detecting a keyword use by the customer indicating that the customer desires to deal with a supervisor and wherein the means for automatically engaging engages the supervisor in response thereto.

14. The apparatus according to claim 11, wherein the third party is automatically engaged into a background of the ongoing data session of at least one of the first and second parties in response to the automatic monitoring.

15. The apparatus according to claim 11, wherein the third party is automatically engaged into a foreground of the ongoing data session to reduce stress levels of at least one of the first and second parties in response to the automatic monitoring.

16. The apparatus according to claim 11, wherein the third party communicates only with one of the first and second parties.

17. The apparatus according to claim 11, wherein the third party communicates with both of the first and second parties.

18. The apparatus according to claim 11, wherein the monitoring of the data session between the first and second parties is conducted in real-time.

19. The apparatus according to claim 11, wherein the means for monitoring of the data session is at least one of; means for analyzing a respective voice signal of at least one of the first and second parties, means for converting a respective voice signal of at least one of the first and second parties to text and analyzing the text, and means for analyzing a physical stress level of at least one of the first and second parties.

20. A system for improving transactions in a communication system comprising:

a computerized transaction handling system which handles text data sessions

established between first and second parties in an ongoing transaction in the

communication system;

a computerized sub-system associated with the transaction handling system which

automatically monitors at least some of the data sessions; and

a computerized sub-system associated with the transaction handling system which

automatically joins a third party into the ongoing transaction as an additional

participant in the transaction in response to detection in real-time of at least one

target parameter by the automatic monitoring.